

No. 83-1237

Supreme Court, U.S.
FILED

MAY 7 1984

ALEXANDER L. STEVAS
CLERK

**In the Supreme Court
OF THE
United States**

OCTOBER TERM, 1983

FRANCISCO SANCHEZ-MARTINEZ,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**SUPPLEMENTAL BRIEF AND
SUGGESTION FOR REMAND**

Francisco Sanchez-Martinez,
Petitioner.

Colin F. Campbell
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Attorneys for Petitioner

This Supplemental Brief is submitted pursuant to Rule 22.6 of the Supreme Court Rules. Petitioner in the above-captioned case, Francisco Sanchez-Martinez, has asked this Court to grant his petition for certiorari in order to hear and decide the question whether the "clearly erroneous" standard of appellate review is the appropriate standard where the question before the appellate court involves a claim of citizenship by birth. We have argued in our petition that a close, independent review of the record is necessary in light of the constitutionally protected right of a citizen by birth to continue to enjoy the benefits of that status. The United States in its response has argued that the rule 52 "clearly erroneous" standard is the appropriate appellate standard.

On Monday of this week, April 30, 1984, this Court decided a case involving the question whether the rule 52 "clearly erroneous" standard constituted the proper standard for reviewing issues of fact in a libel case. *Bose Corporation v. Consumers Union*, No. 82-1246. We submit that the Court's analysis there is fully applicable to the *Sanchez-Martinez* case: where fundamental constitutional rights hang in the balance, judges reviewing the findings of fact at the appellate level have a duty, which cannot be delegated to the trier of fact, to review independently those findings. The two cases are particularly close because in both cases the underlying questions of fact were determined based upon the "clear and convincing" standard at the district court level.

Given the close similarity of the issues involved, and given the fact that the principles applicable to both cases spring from the same constitutionally-based principles, we suggest that it would be appropriate for this Court to remand this case to the Ninth Circuit Court of Appeals for reconsideration in light of *Bose Corporation v. Consumers Union*, No. 82-1246. While it remains this Petitioner's first preference to have his case heard and decided by this Court, we recognize that considerations of efficiency may warrant this more expeditious method of resolution.

Respectfully submitted this 4th day of May, 1984.

MARTORI, MEYER, HENDRICKS
& VICTOR
A Professional Association

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AFFIDAVIT OF SERVICE

COLIN F. CAMPBELL, being first duly sworn upon his oath, deposes and says:

That in accordance with Rule 28.2, Supreme Court Rules, he mailed forty copies of the following documents for filing to the Clerk, Supreme Court of the United States, Washington, D.C. 20543 on the 4th day of May, 1984; and three copies each to Rex Lee, Solicitor General, Department of Justice, Washington, D.C. 20530; Elizabeth Jucius Dunn, Assistant United States Attorney, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025; Steve Bomse, Heller, Ehrman, White & McAuliffe, 44 Montgomery Street, San Francisco, California 94104; and Morris J. Baller, Mexican American Legal Defense and Educational Fund, 28 Geary Street, San Francisco, California 94108:

- (a) Supplemental Brief and Suggestion for Remand;
- (b) Affidavit of Service.

MARTORI, MEYER, HENDRICKS & VICTOR
A Professional Association

By _____
Colin F. Campbell
Suite 4000
2700 North Third Street
Phoenix, Arizona 85004
Attorneys for Petitioner

SUBSCRIBED AND SWORN to before me this 4th day of
May, 1984, by Colin F. Campbell.

Notary Public

My Commission Expires:
